

REMARKS

Applicants have carefully reviewed this Application in light of the Final Office Action mailed December 10, 2008. Claims 1, 4-10 and 21-32 are pending in this Application. Claims 1, 21-23, 25 and 30, stand rejected under 35 U.S.C. § 102(b) and 4-10, 24 and 26 stand rejected under 35 U.S.C. § 103(a). Claims 2-3 and 11-20 were previously cancelled without prejudice or disclaimer. Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 102

Claims 1, 21-23, 25 and 30 were rejected by the Examiner under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0178365 by Shingo Yamaguchi (“*Yamaguchi*”). Applicants respectfully traverse and submit that *Yamaguchi* does not anticipate the Claims of the present application. In particular, with respect to independent Claims 1, 25 and 30, Applicants respectfully submit that *Yamaguchi* fails to disclose each and every limitation recited in Claim 1, 25, and 30.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, “the identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Applicants respectfully submit that the art cited as anticipatory by the Examiner cannot anticipate the rejected Claims, because the cited art does not show all the elements of the present Claims.

For example, as noted in Applicants’ prior response, Claim 1 recites the following elements:

- “in a wireless network ***having a deactivated wireless network security*** for the wireless network such that at least a first wireless client and a second wireless client ***can access the wireless network without authentication***, a wireless host establishing a communication connection with the first client;”

- “in association with the determination to activate the wireless security network, the wireless host receiving an identifier code from the first client;” and
- “the wireless host determining that the received identifier code from the first client matches a unique key-code maintained by the wireless host.”

In the Office Action, the Examiner states that these last two elements are taught by *Yamaguchi* at Paragraph [0005] which states in part: “In order to use such WEP encryption, the user sets the same encryption key in both the end client or the laptop computer, and also the access point which communicates with the wireless device.” (Office Action, Page 3-4). The Examiner states that “The Examiner interprets the ‘received identifier code’ as the encryption key used to set up WEP.” (Office Action, Page 3). However, as noted by Applicants in their prior response, if the WEP encryption key is communicated from the first client to the wireless host, this would necessarily mean that WEP would already be set up prior to the communication of such encryption key. If WEP is already set up, then the network is not a “wireless network having a deactivated wireless network security” wherein “at least a first wireless client and a second wireless client can access the wireless network without authentication.” To the contrary, if WEP is set up, then the wireless network is one having activated wireless network security and, by using the already-set WEP key, the wireless client is accessing the network with authentication.

In reply to these arguments, the Examiner states that:

“Figure 2A [of *Yamaguchi*] shows two different wireless LAN cards, one with encryption, and one without. In that regard, the first and second client **can** access the network without authentication. It is just done through a different firewall setting level. In other words, *Yamaguchi* allows ‘some communications to be encrypted whereas others may be unencrypted (Paragraph [0024])’”

(Office Action, Page 2) (emphasis in original).

This assertion by the Examiner fails, because, among other things, the Examiner has incorrectly stated that the “first and second client **can** access the network without authentication.” As shown in the Borisov et al. reference (“*Borisov*”) submitted in an IDS contemporaneous to this Response, WEP is not only an encryption standard but also a communication standard employing authenticated messages. (See, e.g., *Borisov*, pp. 5-8).

Thus, if *Yamaguchi* indeed shows two different wireless cards, one with WEP encryption enabled and one without, only the one not employing WEP encryption may access the network without authentication, thus meaning *Yamaguchi* does not disclose “at least a first wireless client and a second wireless client [that] can access the wireless network without authentication” as recited in Claim 1.

For at least these reasons, *Yamaguchi* does not teach each and every element of Claim 1, and thus cannot anticipate Claim 1. For the same or analogous reasons, *Yamaguchi* fails to anticipate Claims 25 and 30 which include limitations similar to those set forth in Claim 1. Given that Claims 21-23 depend from Claim 1, Applicants submit that Claims 21-23 are also allowable. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 102(b), and full allowance of Claims 1, 21-23, 25 and 30.

Rejections under 35 U.S.C. § 103

Claims 4-5 and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Yamaguchi* in view of U.S. Patent Application Publication No. 2003/0154287 by Gary E. Sullivan (“*Sullivan*”).

Claim 24 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Yamaguchi* in view of U.S. Patent Application Publication No. 2003/0200455 by Chi-kai Wu (“*Wu*”).

Claims 6-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Yamaguchi* in view of U.S. Patent Application Publication No. 2003/0078072 by Zeljko John Serceki et al. (“*Serceki*”) further in view of Windows Millennium Edition 2000 (“*Windows*”).

Although the Applicants make no concessions regarding the rejections of Claims 4-10, 24, 26-29 and 31-32, Applicants submit that: (i) Claims 4-10 and 24 are allowable at least because they depend from and provide further limitations to Claim 1, shown to be allowable above; (ii) Claims 26-29 are allowable at least because they depend from and provide further limitations to Claim 25, shown to be allowable above; and (iii) Claims 31-32 are allowable at least because they depend from and provide further patentable limitations to Claim 30, shown to be allowable above. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a), and full allowance of Claims 4-10, 24, 26-29 and 31-32.

Information Disclosure Statement

Applicants enclose an Information Disclosure Statement and PTO Form 1449, with a copy of the reference and authorize the Commissioner to charge \$180.00, for the Examiner's review and consideration.

CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants enclose an Information Disclosure Statement and PTO Form 1449 and authorize the Commissioner to charge \$180.00 to Deposit Account 50-2148 of Baker Botts L.L.P. Applicants believe there are no other fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2684.

Respectfully submitted,
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